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Miami FL 33169

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DEC 13 2004

In re Application of
Wakefield
Application No. 09/877,729
Filed: June 8, 2001
Attorney Dck't. No. n/a

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: **OFFICE OF PETITIONS**
: ON PETITION
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This is a decision on the communication filed November 10, 2004, which is being treated by the Office of Petitions solely to consider the request under 37 CFR 1.183 seeking suspension of the rules.

The petition under 37 CFR 1.183 is **dismissed**.

THE FEE EXTENDIBLE PERIOD FOR REPLY TO THE OUTSTANDING FINAL OFFICE ACTION OF OCTOBER 6, 2004, CONTINUES TO RUN FROM THAT DATE, WAS NOT TOLLED BY THE FILING OF THIS PETITION, see 37 CFR 1.181(f), AND IS NOT RESET BY THIS DECISION.

Petitioner, who is applicant now acting *pro se*, seeks tolling of all applicable dates for submission and fee payment pending disposition of a disciplinary matter apparently involving counsel(s) formerly of record. Petitioner includes a certification from the State of Florida Division of Administrative Hearings dated April 13, 2004, that certifies petitioner is an indigent such that he need not pay various costs in that department required by the state of Florida. Petitioner also requests that the \$130 petition fee be refunded.

While petitioner seeks a blanket tolling of all applicable dates, petitioner appears to be unaware that most, if not all, dates that have been, may now, or will, be applicable to this applications are set by statute, and as such, the USPTO lacks the discretion or the authority to waive or "toll" such periods. 37 CFR 1.183 by its very language as quoted by petitioner expressly precludes from its aegis the waiver of any requirement of law. Even where the USPTO might have discretion with respect to a regulatory requirement not also expressly set forth in the patent statute, it would be necessary for petitioner to have shown (1) that this is an extraordinary situation where (2) justice requires waiver of the rule. In re Sivertz, 227 U.S.P.Q. 255, 256 (Comm'r Pat. 1985). Petitioner has not shown that either condition exists in this case. First, petitioner has not pointed to any specific regulatory period for which waiver is sought, and (2) petitioner has not shown any causal relationship between waiver of any unspecified period(s) and the "disciplinary matter" to which petitioner refers. Petitioner revoked on April 3, 2004, all previous powers of attorney and, in the absence of appointment of another registered practitioner, has himself now assumed the responsibility for further prosecution of this application, and the attendant risks arising from a failure to know and properly apply the patent statutes, the rules of practice, and the procedures before the USPTO.

The services of a registered attorney or agent are strongly recommended, especially in view of the complexities of the patent laws and regulations. The USPTO cannot prosecute this application on behalf of petitioner; e.g., prepare a proper reply for

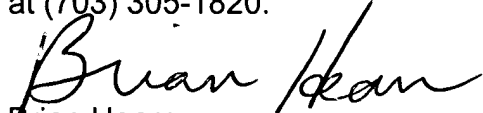
applicant. Likewise, the USPTO cannot recommend the services of a particular attorney or agent to the exclusion of any other. Petitioner may wish to consult his local telephone directory or can obtain a listing of registered practitioners in his area by accessing the USPTO web site at: www.uspto.gov, and then click on "Patents;" and on that page under the caption "Resources;" click on "Locate Registered Attorneys and Agents." Petitioner may also obtain general information from the Inventor's Assistance Center at 1-800-786-9199.

Further, as many of the fees that may now or soon will be applicable to this application at this stage of prosecution such as for example extension of time fees, Notice of Appeal Fee etc. are all a requirement of the patent statute, they cannot be waived. The payment of a statutorily required fee is obligatory upon the applicant and collection of the statutorily required fee is likewise obligatory upon the Office. Boyden v. Commissioner of Patents, 441 F.2d 1041, 1043, 168 USPQ 680, 681 (D.C. Cir.), *cert denied* 404 US 842, 868, 171 USPQ 312 (1971); see also Giuliani v. United States, 8 USPQ2d 1095 (D. Hi 1988), *aff'd mem.*, 878 F.2d 1444 (Fed. Cir. 1989). The USPTO has no discretion to proceed in the absence of such statutorily required payments, and also lacks authority to permit a party to proceed *in forma pauperis* before it. Boyden, supra. Since 37 CFR 1.183, by its terms may not be invoked contrary to the statute, the requested relief from any applicable fees cannot be favorably considered.

As the fee was required for consideration of the petition, the fee is not refundable upon the rendering of the decision, regardless of the outcome of the decision. Ex parte VENTURA CITRUS ASSOCIATION, 71 USPQ 103, 104 (Comm'r Pat. 1946).

Lastly, it is noted that the instant communication was improperly captioned by applicant for more than one area of the USPTO *i.e.*, the Office of Petitions and OED. However, these are separate areas of the USPTO and treat different matters. Accordingly, 37 CFR 1.4(c) requires that applicant have filed two separate communications each separately captioned for the proper area. The Office of Petitions has treated the petition as a matter under its jurisdiction but has no jurisdiction of matters before OED. Further, OED cannot decide petitions, which is a matter for this office. Petitioner is also reminded that, pursuant to 37 CFR 1.1(a)(3)(ii) communications related to disciplinary proceedings are not properly mailed to the same address as for correspondence directed to patent applications. Accordingly, should petitioner wish any non petitionable matter mentioned in the instant communication considered by OED, it should be sent in a separate communication addressed to, and captioned for, OED at the USPTO address noted above.

Telephone inquiries relative to this decision only should be directed to the undersigned at (703) 305-1820.



Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy